IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 895 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

YOGO @ YOGESH BACHUBHAI RATHOD

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 895 of 2000

MR BS SUPEHIA for appellant No. 1

Mr.M.A.Bukhari, learned Addl. P.P.

for the respondent

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE D.K.TRIVEDI

Date of decision: 29/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI)

1. We have taken up this Appeal for final hearing at the instance of both the sides. The learned counsel for the appellant has submitted that he would raise only one contention in this Appeal, namely, that the sentence of ten years' rigorous imprisonment imposed on the appellant for the offence under Section 376 of the I.P.C. is excessive and that it should be reduced to minimum of seven years' rigorous imprisonment while confirming other sentences.

2. We have perused the original record and heard the learned counsel appearing for both the sides. According to the prosecution, the appellant had removed minor Pushpa,who was of about fourteen years of age from the lawful guardianship of her father Manjibhai promising her to get married with him and that when she had refused to accompany him, he threatened her that he would disclose their love affair to her parents and by exercising such pressure, he took her to Chotila where in a Guesthouse he committed rape on her.

3. The trial court relying upon the oral and documentary evidence, came to a finding that the prosecution had established that the appellant committed rape on minor Pushpa after kidnapping her on 9.7.99 at 11 'O' clock by giving her threat of disclosure of their love affair to her parents and also by giving her threat of her life. The appellant was sentenced to ten years rigorous imprisonment and a fine of Rs.100/-- in default to undergo further rigorous imprisonment for one month for the offence under Section 376 of the I.P.C. He was also sentenced to five years' rigorous imprisonment and a fine of Rs.100/-- in default to undergo one month's rigorous imprisonment for the offence under Section 366 of the I.P.C. and rigorous imprisonment for two years and a fine of Rs.100/--, in default, to further undergo one month's simple imprisonment for the offence under Section 363 of the I.P.C. Sentence of six months' rigorous imprisonment and a fine of Rs.100/-- with a similar default clause was imposed on him for the offence under Section 506(2) of the I.P.C.

4. Even though the learned counsel for the appellant argued the appellant's case from the angle of quantum of punishment, we have examined the original record and we are satisfied from the evidence of the complainant Manjibhai (Exh.11), his complaint (Exh.12), the deposition of victim Pushpa (Exh.13), the deposition of Medical expert Dr. Binaben (Exh.16), the Medical

Certificate (Exh.18) and other evidence on record that the prosecution has fully established the guilt of the accused in respect of the offences levelled against him. We find ourselves in full agreement with the reasoning and findings of the trial Judge.

5. It appears from the record that the appellant-accused was hardly nineteen years of age at the relevant time. Moreover, there were letters written by this girl from time to time to the accused, which were brought on record and which indicate that there indeed was a love affair between this minor child of fourteen years and the appellant, who was a young person of about nineteen years of age. From the medical and other evidence, it appears that the accused did not use any force and that the girl had accompanied him without any resentment. Having regard to the totality of the facts and circumstances of the case, which have bearing on the question of sentence, we are of the view that ends of justice will be met if the sentence of rigorous imprisonment of ten years imposed on the appellant for the offence under Section 376 of the I.P.C. is reduced to seven years' rigorous imprisonment, while maintaining all other convictions and sentences. We accordingly pass the following order:-

The Appeal is partly allowed and while confirming the conviction of the accused for all the offences proved against him, we reduce the sentence of rigorous imprisonment of ten years for the offence under Section 376 of the I.P.C. to seven years' rigorous imprisonment, while maintaining all other sentences for the offences for which he has been convicted, and confirming the impugned judgment and order in all other respect.

(R.K.Abichandani,J)

(D.K.Trivedi,J)

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